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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Communications Assistance for)	CC Docket No. 97-213
Law Enforcement Act)	
)	
Public Notice, Comment Sought on CALEA)	DA 99-863
Revenue Estimates of Five Manufacturers)	

To: Chief, Office of Engineering and Technology

**REPLY COMMENTS OF AIRTOUCH COMMUNICATIONS, INC.
CONCERNING AGGREGATE CALEA REVENUE ESTIMATES**

AirTouch Communications, Inc. ("AirTouch"), by its attorneys, hereby replies to the comments filed in response to the Office of Engineering and Technology's Public Notice, *Comments Sought on CALEA Revenue Estimates of Five Manufacturers*, DA 99-863 (OET May 7, 1999) ("Public Notice").

Nearly all of the commenters concurred with AirTouch that the aggregate revenue data compiled by the Commission, while imperfect (as the Public Notice acknowledged), in fact understate the enormous cost of implementing the FBI's "punch list" in addition to the already-huge cost of complying with the J-Standard.¹ There was also broad agreement among commenters that cost is a critical factor that the Commission must consider under several of the tests set

¹ See Comments of BellSouth Corporation at 2-4; Cellular Telecommunications Industry Association at 2-9; Personal Communications Industry Association at 3-4; PrimeCo Personal Communications, L.P. at 2-5; SBC Communications, Inc. at 1-4; Sprint Spectrum, L.P., d/b/a Sprint PCS at 4-5; United States Telephone Association at 2-3; U S WEST, Inc. at 1-3; cf. Comments of Omnipoint Communications Services LLC at 1-4 (emphasizing the difficulty of drawing conclusions from an aggregation of data based on different premises).

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forth in Section 107(b) of CALEA in deciding whether to add the punch list to the industry safe-harbor standard.² Many commenters echoed AirTouch's conclusion that the aggregate data confirm that the punch list "flunks" these tests, due to its excessive cost, and cannot therefore be required by statute.³

The only dissension from these views comes from the FBI. Not surprisingly, the FBI reiterates its opposition to consideration of aggregate cost estimates — or, indeed, any cost estimates — because of its view that the FCC has no basis for considering costs when it decides whether punch list items must be included in a modified safe-harbor standard. AirTouch has previously shown that the FBI's interpretation of Section 107(b) of CALEA is contrary to the express words of the statute and should be rejected, and AirTouch does not repeat that explanation here.⁴

For its part, the FBI, like the other commenters, recognizes that the FCC's aggregate revenue estimates have flaws. Unlike other commenters, however, the FBI claims that the aggregate estimates *overstate*, rather than understate, the cost of CALEA compliance. The FBI has supplied no cost data of its own to substantiate this unique position. Moreover, the FCC was compelled to seek comment on incomplete aggregated data obtained from manufacturers only because the FBI, the proponent of the punch list, failed to carry its burden in establishing the

² See Comments of BellSouth at 3; CTIA at 1-2; PCIA at 1-2; PrimeCo at 2; SBC at 4; Sprint PCS at 6; USTA at 1-2; U S WEST at 1-2;

³ See Comments of CTIA at 9; PrimeCo at 1, 4-5; U S WEST at 1. Two commenters took the position that the aggregated revenue data are insufficiently reliable for reaching a decision, but acknowledged that cost is an important factor in doing so and accordingly urged the Commission to obtain better, more consistent cost estimates and seek further comment. See Comments of Omnipoint at 1-4; Sprint PCS at 4, 6.

⁴ See Reply Comments of AirTouch, filed January 27, 1999, at 7-10. In addition, the FBI appears to largely ignore the cost impacts of J-Standard implementation in determining CALEA compliance, again contrary to statutory requirements.

cost-effectiveness (and legitimacy under the statute) of the so-called punch list items. Under these circumstances, the FBI cannot properly criticize the evidence the FCC has gathered.

More fundamentally, the FBI's claim that the aggregate revenue estimates overstate CALEA implementation costs has no merit. First of all, the FBI fails to address adequately the fact that the aggregate figures do not include all vendors. The FBI asserts that manufacturers in the aggregate figures "collectively cover approximately 90% of the access lines in the United States."⁵ There is no indication how the FBI reached this view, particularly in light of the fact that Ericsson, which comprises some 30% of the U.S. wireless equipment market, is not included.⁶

In claiming that the aggregate estimates are too high, the FBI also fails to account for the fact that the vendors in the FCC's matrix do not even include all of their *own* CALEA compliance revenues. Further, the FBI even ignores the considerable cost of equipment not included in the manufacturers' estimates. Similarly, the FBI also ignores carrier costs for CALEA compliance related to their own staffing, implementation, and to purchases of products and services from third-party vendors.⁷

Not only does the FBI ignore the costs that are omitted from the FCC's matrix, the FBI also discounts the manufacturer revenues that are included in the matrix. It does so on the supposition that those estimates are based on "'list' prices that are more than *twice as high* as those that carriers will actually pay."⁸ Again, this is pure conjecture and has no record support.

⁵ FBI Comments at 9.

⁶ See CTIA Comments at 5.

⁷ See AirTouch Comments.

⁸ FBI Comments at 6.

This claim is also inconsistent with the FCC's description of the revenue figures: "Revenues are the prices the manufacturers plan to charge times the quantities they anticipate selling, and may include profits."⁹ The FBI also overlooks the fact that one or more of the manufacturers' revenue estimates are premised on a negotiated government "buyout," and are therefore almost certainly *not* based on list prices. Accordingly, the FBI's diatribe against reliance on list prices is baseless.

Having criticized the aggregate figures for being too high (while overlooking all of the foregoing costs that were not included), the FBI then claims that the aggregate figures instead show that the carriers' own estimates were too high.¹⁰ Again, the FBI is wrong. As AirTouch showed in its comments, the fact that the composite revenue estimates are of the same order of magnitude as the carriers' own cost estimates confirms the validity of the carrier estimates. This is particularly true in light of the fact that the carriers' estimates included costs that would not have been included in the manufacturers' estimates, such as their own staffing costs and the cost of equipment. The fact that some carriers' own cost estimates are comparable to, or greater than, the composite revenue estimates for the entire industry simply points up the omissions from the composite estimates. It certainly does not give the FCC grounds to doubt the validity of the

⁹ Public Notice at ¶ 2 n.3.

¹⁰ See FBI Comments at 9-10.

carriers' estimates, as the FBI argues.¹¹ To confirm, the aggregate data fully supports the carriers' claims that the punch-list does not meet CALEA cost requirements.¹²

Finally, the FBI asserts that better cost figures will become available to the FCC for use in this rulemaking once even a single negotiation has been completed with a manufacturer for development and sale of a complete CALEA solution.¹³ In the absence of *imminent availability* of such data for review and comment, however, it is clear that the FCC will have to proceed with the record cost data it *does* have in its possession. All parties agree that prompt action is in the public interest. AirTouch therefore is not optimistic that this provides a realistic alternative to review and consideration of the cost data which is currently available.¹⁴

For the foregoing reasons, the Commission should recognize that the FBI's comments are entitled to little weight. The FBI obtained a variety of confidential cost information from

¹¹ AirTouch notes that the carriers who provided cost estimates in their comments had to rely on information provided by their vendors. AirTouch and the other carriers supplying this information did so in a good faith effort to develop a meaningful record. The FBI has no grounds for suggesting that the carriers figures were inflated to make CALEA implementation seem more expensive than it will actually be. The FBI's criticism of carriers' attempt to place useful information in the record is not well taken, especially since the FBI has not submitted any cost estimates of its own, despite having access to numerous manufacturers' estimates.

¹² AirTouch also notes that it is ironic that the FBI, having attempted unsuccessfully to argue that the aggregate figures are inflated, nonetheless attempts to use/rely on the *same* data to attack the carrier estimates.


¹³ That actual negotiated cost figures would form a better basis for rulemaking than the aggregates cannot be disputed. If there is, in fact, reason to believe that actual cost figures based on one or more fully negotiated agreements will become available soon and can be made part of the public record of this proceeding, the Commission could consider a limited deferral of action in this proceeding. Once the actual cost figures were submitted, the FCC could issue a public notice and invite comments on how the cost figures should affect this proceeding. As discussed herein, however, AirTouch notes that this does not appear to be a realistic option at this time.

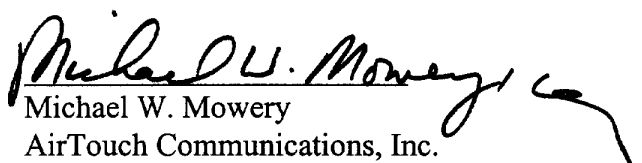
¹⁴ In addition, AirTouch notes that any "buyout" agreement may — or may not — address costing of all punch list items. Again, such agreement may have only limited value to this proceeding and it is likely the FCC will be required to proceed without such data.

manufacturers long ago, but failed to make that data available for consideration in this proceeding, even in aggregate form. (AirTouch is compelled to note that the FBI's refusal to provide the Commission with any meaningful cost support information suggests that the data may not have supported the FBI's position.) In any event, with no evidence or record support for its position, the FBI is in no position to criticize data supplied by others. The FCC should reject the FBI's attempt to undermine CALEA statutory requirements and the cost analysis contained in the record.

Respectfully submitted,

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